

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Real Life Broadcasting)	File Number EB-08-PA-010
)	
Licensee of AM Station WIFI)	NAL/Acct. No. 200832400005
Florence, New Jersey)	
Facility ID # 55310)	FRN 0007-66-4493
)	

FORFEITURE ORDER

Adopted: September 1, 2009

Released: September 3, 2009

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eighteen thousand four hundred dollars (\$18,400) to Real Life Broadcasting (“Real Life”), licensee of station WIFI, in Florence, New Jersey, for willfully and repeatedly violating Sections 73.1745(a), 11.35, 73.49, and 73.3526(e)(12) of the Commission’s Rules (“Rules”)¹ by operating station WIFI with excessive power, failing to maintain an operational EAS system, failing to maintain an effective enclosure at the base of the WIFI tower, and failing to maintain issues/program lists in the public inspection file. In this *Order*, we consider Real Life’s request for cancellation or reduction of the forfeiture amount based on its remedial efforts, its overall history of compliance with the Rules, and its inability to pay.

II. BACKGROUND

2. Between April 18, 2007 and February 7, 2008, agents from the Commission’s Philadelphia Office conducted inspections of station WIFI in response to complaints alleging that the station was operating with excessive power.

3. At the time of the inspections conducted between April 18, 2007, and April 24, 2007, Real Life held a Special Temporary Authority (“STA”) authorizing it to operate station WIFI with parameters at variance and/or reduced power while maintaining monitor points within licensed limits or to operate station WIFI with a non-directional antenna and reduced power not to exceed 1250 Watts daytime and 125 Watts nighttime.

4. Between 8:57 p.m. and 9:35 p.m. on April 18, 2007, and between 10:40 a.m. and 11:04 a.m. on April 20, 2007, agents conducted field intensity measurements of the WIFI signal on 1460 kHz at the station’s monitoring points. The agents found that the station exceeded the licensed field intensity limits

¹ 47 C.F.R. § 73.1745(a), 11.35 and 73.49(a), and 73.3526(e)(12).

at the monitoring points along the 39.5°, 284.6° and 347° radials. Because Real Life was operating station WIFI with a non-directional antenna and not maintaining the monitoring points within licensed limits, Real Life was required under the STA to operate station WIFI with a power not to exceed 1250 Watts daytime and 125 Watts nighttime.

5. According to an entry in the station logs, Real Life was operating station WIFI with 1250 Watts of power during the daytime on April 20, 2007.² Based on the agent's field intensity measurements, which were made on April 18, 2007, and on April 20, 2007, and the station's power on April 20, 2007, the agents calculated that, on April 18, 2007 between 8:57 p.m. and 9:35 p.m., Real Life operated station WIFI with 998.6 Watts, resulting in operation at 799 percent of the authorized nighttime power (125 Watts).

6. On April 20, 2007, agents inspected the EAS equipment at the WIFI main studio and reviewed the records of all EAS activations received and transmitted between October 22, 2006, and April 20, 2007. At the time of the inspection on April 20, 2007, Real Life was unable to provide any EAS logs of any kind to demonstrate that the station had received an EAS alert since February 20, 2007, or that the equipment had been removed for repair. The agents also observed that the station's EAS equipment was incapable of receiving any EAS activations. One of the radio receivers connected to the station's EAS decoder was turned off. The other radio receiver connected to the station's EAS decoder was powered on and tuned to FM broadcast station WKXW on the frequency 101.5 MHz. However, the audio from WKXW was barely audible through the station EAS decoder. During the inspection, agents informed WIFI's chief operator about the condition of the EAS equipment and warned him that the EAS equipment was not operational.

7. During the inspection on April 20, 2007, the agents also reviewed the contents of the station's public inspection file and found that it did not contain any issues/program lists. Real Life was required to maintain all issues/program lists since June 1, 2006, the beginning of its most recent renewal term.

8. After conducting the inspection at the main studio on April 20, 2007, agents proceeded to WIFI's transmitter site. Real Life has a four tower directional antenna array for station WIFI and each of the antenna structures is enclosed within a fence. There is no property fence surrounding the tower array. The agents observed that the gates to three of the four antenna structures were left open and the gate to the fourth antenna structure that WIFI was using for its non-directional antenna was closed but not locked. The agents immediately informed the President of Real Life and the station's contract engineer that the fences surrounding each WIFI antenna structure must be secured within an effective locked fence.

9. On April 23, 2007, agents returned to the WIFI main studio and conducted another inspection of the station's EAS equipment. The agents observed that the condition of the EAS equipment had not changed since the April 20, 2007, inspection. At 1:16 p.m. on April 23, 2007, at the request of FCC agents, broadcast station WKXW transmitted an EAS test. The EAS decoder at station WIFI did not receive the EAS test from station WKXW. The agents determined that, at the time of the inspection, the monitoring functions of the EAS equipment at station WIFI were not available because the radio receivers connected to the EAS equipment were incapable of receiving EAS activations.

² On April 20, 2007 at 1:45 p.m., the agents determined that station WIFI was operating with 4991 Watts based on a reading of the common point meter. Subsequent to the inspection, the station's contract engineer informed the agents that the common point meter was not providing reliable readings and that he did not know the last time the meter was calibrated. The agents reviewed the station's transmitter logs and found an entry indicating the contract engineer determined the station's operating power was 1250 Watts on April 20, 2007 at 5:30 p.m. The determination was based on the contract engineer's observation of a meter on the transmitter that provides power readings in a percentage of 5000 Watts.

10. On April 23, 2007, agents returned to WIFI's transmitter site and observed that the gates to three of the four antenna structures were closed and locked. However, the gate to the fourth antenna structure that Real Life was using for the non-directional antenna for station WIFI was still not locked.

11. On April 24, 2007, agents met with WIFI's contract engineer at the transmitter site. The contract engineer informed the agents that he had been leaving the gate to the non-directional antenna unlocked because the key for the gate's lock had been lost. He stated that he replaced the lock and secured it when he arrived at the transmitter site that morning. The contract engineer also reported to the agents that the circuit to change the transmitter from daytime to nighttime mode had not been working for more than one year. Instead, the caretaker at the property is responsible for switching the transmitter to nighttime mode and the contract engineer admitted that sometimes the caretaker does not reduce the power and there are no other procedures in place to ensure that the transmitter is in the correct mode.

12. On July 16, 2007, the Philadelphia Office issued a Letter of Inquiry to Real Life as a follow-up on issues resulting from the inspections of station WIFI between April 18, 2007 and April 24, 2007. The issues addressed in the LOI included, among other things, the station's operating power, EAS equipment, antenna structure enclosures, and the radio issues/program lists.

13. On August 2, 2007, the Philadelphia Office received a response to the Letter of Inquiry from Real Life. In the response, Real Life stated that it invested in a new remote monitoring unit, a Burk ARC Plus, which can automatically adjust the station's power to the authorized daytime and nighttime modes.³ Real Life also acknowledged that, prior to April 24, 2007, it had last received an EAS activation on February 20, 2007. Real Life stated that its EAS equipment was impacted by lightning in approximately March/April 2007. Real Life said that after the most recent visit from the FCC, they immediately checked and reset the equipment to monitor the Local Primary Stations as designated in the New Jersey State EAS Plan. Furthermore, Real Life stated that its issues/programs lists are now maintained in the station's public inspection file, which is located in a file drawer in the station's studio.

14. On January 23, 2008, the Philadelphia Office received information that station WIFI was operating with excessive power. An agent of the Philadelphia Office checked the FCC Records and found that the Extension of Special Temporary Authority that the Commission granted Real Life on October 2, 2007 for station WIFI expired on January 2, 2008.⁴ Therefore, Real Life was required to operate station WIFI according to the terms of its license, which authorizes Real Life to operate station WIFI with a directional antenna system and an antenna input power of 5250 Watts daytime and 540 Watts nighttime.

³ On February 7, 2008, the WIFI contract engineer informed the agents that the Burk ARC Plus was installed a week or so after the FCC inspection on April 24, 2007.

⁴ On October 2, 2007, the Commission granted Real Life an Extension of Special Temporary Authority authorizing Real Life to operate station WIFI for an additional period of 90 days with a non-directional antenna and a power reduction to 125 Watts daytime and nighttime. The Commission also specified that WIFI must operate with a further reduced power than authorized in the previous STA, because the Commission received complaints that WIFI was causing harmful interference to another licensed station and the Commission was unable to find that any progress had been made toward restoration of licensed operation. Although the Extension of Special Temporary Authority expired on January 2, 2008, Real Life did not file another request for Extension of STA with the Commission until February 6, 2008. On May 12, 2008, the Commission granted the request for STA that Real Life filed on February 6, 2008. In light of the lapse of time between the expiration of the prior STA on January 2, 2008 and the filing of the February 6, 2008 request for Extension of STA, the Commission considered the February 6, 2008 filing as a request for new STA. Therefore, the grant did not cover the period between the expiration of the prior STA on January 2, 2008 and the filing of the February 6, 2008 request.

15. Between January 26, 2008 and January 29, 2008 and on February 5, 2008, an agent of the Philadelphia Office made field intensity measurements of the WIFI signal on 1460 kHz with a calibrated Potomac Field Intensity Meter. All measurements were made at the same location in the parking lot of the WAWA Food Market, 3620 Bath Road, Bristol, Pennsylvania 19007. The agents would later use these measurements to determine that Real Life was operating station WIFI with excessive power.

16. On February 7, 2008, agents of the Philadelphia Office conducted an inspection at WIFI's transmitter site. During the inspection, WIFI's contract engineer stated that, because the station's common point meter and transmitter plate voltage meter had completely failed, he had been measuring the station's power with a meter on the transmitter that provides readings in a percentage of 5000 Watts. The contract engineer stated that he calibrated the meter a week after the agents' last inspection on April 24, 2007 so that a reading of 100% on the meter would correspond to 5000 Watts.

17. At the same time the contract engineer was changing the power of the WIFI transmitter, an agent was conducting field intensity measurements of station WIFI's signal with a calibrated field intensity meter. These measurements were made at the same location where the field intensity measurements were made between January 26, 2008 and January 29, 2008 and on February 5, 2008. Based on the field intensity measurements and the agents' observations of the WIFI power meter during the inspection on February 7, 2008, the agents determined that on January 26, 2008 at 7:39 p.m. and on January 28, 2008 at 9:15 p.m. Real Life operated station WIFI with 1750 Watts resulting in operation at 324 percent of the authorized nighttime power (540 Watts). The agents also determined that on January 27, 2008 at 8:35 p.m., Real Life operated station WIFI with 750 Watts resulting in operation at 138% of the authorized nighttime power (540 Watts).

18. When advised that the station had operated over-powered between January 26, 2008 and January 28, 2008, the contract engineer stated to the agents that the Burk ARC Plus remote monitoring system did not notify him that the station was out of tolerance. The contract engineer further reported that the remote monitoring system did not notify him that the station was over-powered during the tests conducted that day by the agents.

19. The agents also conducted a main studio inspection on February 7, 2008. The agents reviewed the contents of the public inspection file and found that Real Life was not maintaining the issues/program lists in the station's public inspection file. In response to the agents' request, Real Life was unable to provide to the agents any of the issues/programs lists for station WIFI either during or after the inspection. The agents also inspected the station's EAS equipment and determined that it was fully operational.

20. On June 2, 2008, the Philadelphia Office issued a Notice of Apparent Liability for Forfeiture ("*NAL*") in the amount of \$23,000 for apparently willfully and repeatedly violating Sections 73.1745(a), 11.35, 73.49, and 73.3526(e)(12) of the Rules by operating station WIFI with excessive power, failing to maintain an operational EAS system, failing to maintain an effective enclosure at the base of the WIFI tower, and failing to maintain issues/program lists in the public inspection file.⁵ In its response to the *NAL*, Real Life requests a cancellation or reduction based on its remedial efforts, its good faith efforts to comply with the Rules, its history of overall compliance, and its inability to pay.

⁵ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832400005 (Enf. Bur., Philadelphia Office, released June 2, 2008).

III. DISCUSSION

21. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").⁸ In examining Real Life's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹ As discussed below, we have considered Real Life's response to the *NAL* in light of these statutory factors and have found that a reduction in the forfeiture to \$18,400 is warranted based on Real Life's history of compliance with the Rules.

22. We find no merit in Real Life's claim that a cancellation or reduction in the forfeiture proposed in the *NAL* for violating Section 73.49 of the Rules is warranted because having one unsecured fence is much less serious than other situations in which we have found a violation of Section 73.49 of the Rules.¹⁰ Specifically, Real Life submits that it has fences surrounding the bases of each of its towers and that, although one of the fences was "inadvertently unsecured at the time of inspection," it is unlike situations where a licensee has "utterly failed to enclose or secure its transmitter site."¹¹ We disagree. The underlying policy rationale for requiring licensees to maintain effective tower enclosures is to protect the public from gaining access to a radiating antenna. While Real Life may have fences surrounding each of its four antenna structures, the one antenna structure that was actually radiating was the one that was not secured by a locked fence. The fact that other sections of the WIFI transmitter site were secured at the time is irrelevant. We therefore decline to reduce or cancel the forfeiture on this basis.

23. Similarly, we decline to cancel or reduce the forfeiture based on Real Life's claim that the amount of time it took the consulting engineer to purchase and install a new lock for the fence was reasonable. Agents found the gate unlocked on April 20, 2007, and immediately advised Real Life's president of the violation. The gate still was unlocked when agents returned three days later on April 23, 2007. We do not believe that three days to replace the lock was reasonable given that the public's safety and the possibility of contact with a radiating antenna were involved.¹²

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ Real Life cites to *Pittman Broadcast Services, LLC*, Forfeiture Order, 19 FCC Rcd 15320 (EB 2004) in which the licensee erroneously relied on marshy terrain to prevent access to its towers and *Radio Bonners Ferry, Inc.*, Forfeiture Order, 19 FCC Rcd 4716 (EB 2004), in which the licensee had a gate that was incapable of being closed or locked.

¹¹ Real Life also submits that the tower site is in the middle of a large parcel of private property and that the towers are set back approximately 800 feet from the road. While the towers may in fact be set back from the road, the property is easily accessible to the public and, more importantly, a school, Life Center Academy, is located on the property near the towers.

¹² We note that on April 24, 2007, the consulting engineer reported to agents that he had been keeping the gate unlocked because he had lost the key, not, as Real Life now claims, because the grass around the tower had just been mowed.

24. Real Life's response to the *NAL* regarding the other violations - operating station WIFI with excessive power, failing to maintain an operational EAS system, and failing to maintain issues/program lists in the public inspection file - consists almost entirely of information regarding efforts it undertook after the agents' inspections in April 2007.¹³ As the Commission has stated, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹⁴ We therefore will not cancel or reduce the proposed forfeiture based on Real Life's efforts to correct the violations after the agents' inspections.

25. We also decline to reduce the forfeiture based on Real Life's claim of financial hardship. In assessing such a claim, the Commission considers the totality of the circumstances and thus takes into account the assets of a subject's parent, sister, or subsidiary companies.¹⁵ In support of its claim of financial hardship, Real Life submits its federal tax returns for the years 2005, 2006, and 2007, which it filed on Form 990-EZ.¹⁶ On its tax returns for 2005 and 2006, Real Life indicates in Part IV of Schedule A ("Reason for Non-Private Foundation Status") that it is a "Type II" organization based on its relationship with "Burlington Assembly of God" as its "supported organization." According to the instructions for Schedule A for Form 990-EZ, a "Type II supported organization is supervised or controlled in connection with one or more publicly supported organizations" and a "Type II relationship is comparable to a brother-sister relationship." As a result, Real Life was asked to submit financial information regarding Burlington Assembly of God. Burlington Assembly of God, also known as the Fountain of Life Center, declined to submit any financial documentation, claiming that it "does not own or hold any interest in Real Life (which is a separate corporation)."¹⁷ As noted above, however, the Commission takes into account the assets of related entities, including those of a sister company.¹⁸ Absent financial information from Burlington Assembly of God, we find that we do not have a complete picture of Real Life's ability to pay the proposed forfeiture. We therefore will not cancel or reduce the forfeiture on this basis.

26. We conclude, however, that a reduction in the forfeiture is warranted based on Real Life's history of compliance with the Commission's Rules. We have reviewed the Commission database and we find that a reduction in the forfeiture to \$18,400 is warranted.

¹³ We note that, with regard to its overpowered operation, Real Life reports that it does not believe any "impermissible harmful interference" would have occurred to other stations. It is well established, however, that the absence of harm is not considered a mitigating factor of a rule violation. See *Liberty Cable Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16105 (2001); *Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975); *AGM-Nevada, LLC*, Forfeiture Order, 18 FCC Rcd 1476 (Enf. Bur. 2003); *Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893 (SED Enf. Bur. 2005); *Western Slope Communications, LLC*, Forfeiture Order, 23 FCC Rcd 8384 (WR Enf. Bur. 2008).

¹⁴ See *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994).

¹⁵ See *KASA Radio Hogar, Inc.*, 17 FCC Rcd 6256, 6258-59 ¶¶ 4-5 (2002) (stating that it is appropriate to consider the income derived from its consolidated operations to determine whether the "licensee in general is financially capable of paying a forfeiture, not whether financial data from a limited portion of its operations can sustain a forfeiture"); *American Family Association*, 18 FCC Rcd 2413, 2424-15 ¶ 6 (Enf. Bur. 2003) (stating that an evaluation of the ability to pay necessitates a review of the revenues of not only the licensee, but of its parent company as well).

¹⁶ For 2007, Real Life submitted a copy of its Form 990-N, "Electronic Notice (e-postcard)," which apparently was filed in lieu of a complete federal tax return because its gross receipts were less than \$25,000 in 2007.

¹⁷ E-mail from Brendan Holland, Counsel for Real Life, to Sharon Webber, Regional Counsel for Northeast Region, Enforcement Bureau, dated July 31, 2009.

¹⁸ In addition to the relationship between Burlington Assembly of God and Real Life indicated in Real Life's federal tax returns, we also note that the Fountain of Life Center's website states that it runs several ministries, one of which is radio station WIFI. See www.flcnj.org/ministries.

IV. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Real Life Broadcasting, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eighteen thousand four hundred dollars (\$18,400) for violations of Section 73.1745(a), 11.35, 73.49, and 73.3526(e)(12) of the Rules.¹⁹

28. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Real Life Broadcasting, Inc. shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

29. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Real Life Broadcasting, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 73.1745(a), 11.35 and 73.49(a), and 73.3526(e)(12).